IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 36 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANOJBHAI LALJIBHAI KABARIA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 36 of 2002

MR BM MANGUKIYA for Petitioners No. 1-2

Mr B D Desai, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 24/01/2002

ORAL JUDGEMENT

Rule. Mr B D Desai, learned APP waives service of rule and appears on behalf of the State.

2. The two petitioners above named, face trial before the learned Addl.City Sessions Judge, Court No.22 Ahmedabad City in Sessions Case No.283/99 as accused persons. It appears from the record that they submitted an application before the trial court after their further statements under section 313 of Criminal Procedure Code, 1973 were recorded for recalling of Police Investigating Officer stating that the charge sheet presented before the Court showed two statements of a witness Devjibhai Nagjibhai, both were recorded on 15.7.1999 by the same Police Investigating Officer. It is also stated that though the two statements were recorded and though both were supplied to the petitioners along with investigation papers, the learned Advocate appearing for the petitioners before the trial court omitted to consider one of the two statements of witness Devjibhai Nagjibhai and accordingly appropriate questions could not be put to the Police Investigating Officer with respect to recording of the said two statements and, therefore, an application was submitted for recalling of the said Police Investigating Officer. The learned trial Judge found that the prayer was not entertainable and there was no reason for the recall of the witness and, therefore, the learned trial Judge dismissed the said application and hence this revision.

3. On hearing the learned Advocate for the parties, it is revealed that the said two statements of the witness Devjibhai have been produced at pages No.1 and 3 respectively. It appears that the first statement at page no.1 runs into two pages whereas the second statement at page no.3 runs into about 5 pages. Both the statements purported to have been recorded on the same day i.e. on 15.7.1999. Learned Advocate for the petitioner has made it clear that the learned advocate appearing for the petitioner before the trial court did not put any question with respect to these two statements to the Police Investigating Officer and, therefore, it was necessary to bring out some materials from the Investigating Officer with respect to the said statements.

4. It is well settled that the parties should not be made to suffer on account of something wrong or even negligence committed by the Advocate. Advocates are being appointed for the safeguards of the interest of the parties and they are required to protect the interest of the parties. But when on account of one or the other reason, if there is some omission on the part of the Advocate, it would not be appropriate to close the evidence and take up a stand that the witness would not

be recalled despite the provisions made in this behalf in section 311 of the Cr.P.C. Under this circumstance, I am of the opinion that when the application was submitted for the recall of the witness under section 311 of the Cr.P.C., it cannot be said that the said application was submitted with a view to delay the proceedings of the case. It is true that there would be some delay in the final disposal of the said case. At the same time, when the justice demands then in appropriate case, justice should be done even at the cost of delay. In above view of the matter, I am of the view that when two statements are already on record and when it has been fairly conceded that there was omission on the part of the Advocate in putting questions with respect to the said two statements to the Investigating Officer, then in that event, the learned trial Judge has committed error in the eye of law in dismissing the said application. Therefore, in my view, some injustice is likely to be caused if the revision application is dismissed and the request of the learned Advocate for the petitioners is rejected.

5. For the foregoing reasons, this Revision Application is allowed. The Investigating Police Officer shall be recalled under section 311 of the Cr.P.C. for further cross-examination in respect of the said two statements said to have been recorded on 15.7.1999. It may be made clear that the recall will be limited to those two statements of witness, Devjibhai only. With this clarification, this revision application is allowed and the order of the trial court is quashed and set aside.

Rule made absolute to the aforesaid extent. Since there will be further delay and since the Investigating Officer will be required to remain present before the trial court again, the petitioner shall deposit an amount of Rs.500/as cost before the trial court and summons shall be issued to the witness on such deposit. Direct Service today.

24.1.2002 [D P Buch, J.]
msp